

### **REMARKS**

Claim 1 has been canceled without prejudice to resubmission. New claims 2-22 have been added by this amendment. Basis for the new claims can be found, for example, in Figures 19A-19J, and the accompanying description of those figures, of the application as originally filed.

The drawings were objected to under 37 C.F.R. §1.83(a) on the basis that the drawings did not show a shoe sole with both thickness and density variations. Claim 1 has been canceled and the new claims do not require density variations. Thus, the claim amendments obviate this objection. Favorable consideration and withdrawal of the objection is requested.

Claim 1 has been rejected under 35 U.S.C. §112, first paragraph, on the basis that the specific range of 5-25% variation in density was not disclosed in the specification as originally filed. Claim 1 has been canceled and the new claims do not require density variations. . Thus, the claim amendments obviate this rejection. Favorable consideration and withdrawal of the rejection is requested.

Claim 1 has been rejected under 35 U.S.C. §112, second paragraph, on the basis that the language “for shoe and other footwear, particularly athletic shoes and including street shoes” is vague, confusing and indefinite. Claim 1 has been canceled and the new claims do not include this language. Thus, the claim amendments obviate this rejection. Favorable consideration and withdrawal of the rejection is requested.

Claim 1 has been rejected under 35 U.S.C. §102(b), as anticipated by, or, in the alternative under 35 U.S.C. §103(a) as obvious over, U.S. Patent no. 4,366,634 (Giese). This rejection, at least insofar as it applies to new claims 2-22, is respectfully traversed and reconsideration is requested for the reasons which follow.

With respect to new independent claim 2, Giese does not appear to disclose either of the following features of claim 2:

A. each of said rounded midsole portions of the shoe sole has a substantially uniform thickness extending from a location proximate to a sidemost extent of the shoe sole side to a lowest point on said sole side, as viewed in a frontal plane cross-section when the shoe sole is upright and in an unloaded condition; and

B. at least two tapered portions having a thickness that decreases gradually from a first thickness to a lesser thickness, as viewed in a shoe sole horizontal plane when the shoe sole is upright and in an unloaded condition, said thickness of each of said tapered portions being measured from the inner surface of the midsole component to the outer surface of the shoe sole, and each of said tapered portions being located at a location on the shoe sole corresponding to a location of each of the rounded midsole portions.

With respect to element A, it appears that the thickness of the midsole component of Giese shown in Figs. 6-10A varies substantially from a location proximate to a sidemost extent of the shoe sole side to a lowest point on said sole side. Thus, Giese does not appear to show the claimed substantially uniform thickness in the midsole component of new independent claim 1.

With respect to element B, the only horizontal plane view shown in Giese appears to be Figure 11. This figure, however, does not appear to show areas of the shoe sole which taper in thickness, as viewed in a horizontal plane (see e.g. Figure 19E of the present application), as required by new independent claim 1.

The same arguments apply to new independent claim 21 of the present application. With respect to new independent claim 22 of the present application, the same argument applies to element B, above. With respect to element A, new independent claim 22 requires that the rounded portions of the shoe sole have a substantially uniform thickness from a lowest point on the side to proximate a sidemost extent of the shoe sole side. It appears that the thickness of the shoe sole of Giese shown in Figs. 6-10A varies substantially from a location proximate to a sidemost extent of the shoe sole side to a lowest point on said sole side. Thus, Giese does not appear to show the claimed substantially uniform thickness in the shoe sole of new independent claim 22.

Accordingly, for the foregoing reasons, favorable consideration and withdrawal of the

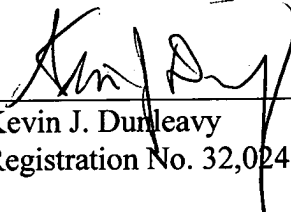
rejections under 35 U.S.C. §§102(b) and 103(a) over Giese is requested.

Claim 1 has been rejected under the judicially created doctrine of obviousness-type double patenting in view of U.S. Patent nos. 6,789,331 and 6,675,498. Claim 1 has been canceled without prejudice to resubmission. New claims 2-22 do not require density variations as is required by the claims of these patents. Accordingly, favorable consideration and withdrawal of the obviousness-type double patenting rejections is requested.

Favorable consideration respectfully requested.

Respectfully submitted,

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